CORP., § 272; 1 THOMPSON, CORP., § 447; TIEDEMAN, LIM. POLICE POWER, 191; *Toledo & C. R. Co.* v. *Jacksonville,* 67 Ill. 37, 16 Am. Rep. 611; *Interstate Comm. Comm.* v. *Chicago & G. W. Ry.,* 209 U. S. 108, 118; *State* v. *Addington,* 12 Mo. App. 214; *Southern etc. R. Co.* v. *Bedford,* 165 Ind. 272, 75 N. E. 268; ELLIOTT, RAILROADS (Ed. 2), §§ 664, 675, 676, 682.

SALES—BREACH OF NON-FRAUDULENT EXPRESS WARRANTY—RIGHT OF BUYER TO RESCIND EXECUTED SALE.—In an action on a promissory note given for a horse, the answer set up facts showing an express warranty, breach thereof, and rescission on the buyer's part. *Held,* demurrable on the ground that, in absence of fraud or a provision for the return of the property, breach of warranty gives the buyer no right to rescind an executed sale. *La Grange* v. *Coyle et al.* (Ind. 1912) 98 N. E. 75.

In accord with the principal case see *Hoover* v. *Sidener,* 98 Ind. 290; *Owens* v. *Sturges,* 67 Ill. 366; *Hutchinson Lumber Co.* v. *Dickerson,* 127 Ga. 328; and cases cited in WILLISTON, SALES, § 608. Massachusetts and several other States allow such rescission. *Bryant* v. *Isburgh,* 13 Gray 607; *Rogers* v. *Hanson,* 35 Iowa 283, and see note in 27 L. R. A., N. S. 921. But the buyer must put seller in *statu quo. White* v. *Miller,* 132 Iowa 144, 8 L. R. A. N. S. 727 and note. Prior to the passage of the UNIFORM SALES ACT in 1911 the point was undecided in New York. *Day* v. *Pool,* 52 N. Y. 416; *Isaacs* v. *Wanamaker,* 127 N. Y. Supp. 346. The SALES ACT allows rescission. The English SALES OF GOODS ACT allows it only if the warranty amounts to a condition. A very similar doctrine may be found in *Joslyn* v. *Cadillac Automobile Co.,* 177 Fed. 863.

SALES—RIGHT OF VENDOR ON ANTICIPATORY BREACH OF EXECUTORY CONDITIONAL SALE.—The agreement was that the plaintiff might ship a cream separator, reserving title, and that the defendant should pay for it on or before its arrival. Later the defendant cancelled the order; in spite of this the plaintiff shipped the machine. On the defendant's refusal to accept or pay. *held,* plaintiff should recover the contract price. *Port Huron Machinery Co.* v. *Hurto* (Iowa 1912) 135 N. W. 31.

The vendee may expressly contract to be liable for the price before either title or possession passes. *White* v. *Solomon,* 164 Mass. 516. Many cases hold that if the vendor has done all that the contract requires, and the vendee then refuses to accept the goods, the vendor may recover the price, although he has expressly reserved title. *National Cash Register Co.* v. *Hill,* 136 N. C. 272, 68 L. R. A. 100, and note. These may well be regarded as executed sales with title given back to the vendor as security. The principal case and *Ideal Cash Register Co.* v. *Zunino,* 79 N. Y. Supp. 504, hold squarely that if the buyer first renounces a contract to sell, the seller may later execute the contract, and recover the contract price. Many cases *say* this, but usually the sales in question were executed, not executory. *Acme Food Co.* v. *Older,* 64 W. Va. 255, 17 L. R. A. N. S. 807, and note. The better rule is that when a contract to sell (an executory sale) is broken, the vendor is limited to an action for the difference between the contract price and the value of the chattel. The Uniform Sales Act (§ 63(3)) does not allow recovery of the

price when a contract to sell is broken unless the goods can not readily be resold for a reasonable price. The principal case and *McCormick Har. Mfg. Co.* v. *Markert,* 107 Iowa 340, are really based on *Moline Scale Co.* v. *Breed,* 52 Iowa 307, which said that "where everything has been done by the vendor which he is required by his contract to do, and the property is tendered to the purchaser and he refuses to receive it, the vendor may recover the contract price." The earlier court, if we may judge from the context and *Gordon* v. *Norris,* 49 N. H. 376 cited in support, meant to make the very distinction which the later one disregards,—i. e.—the distinction between breach by the vendee before the sale is executed, and breach afterwards.

SURETYSHIP—DISCHARGE OF SURETIES—LIABILITIES ON BONDS.—An $8,000 bank deposit being garnished on a demand for $33,000 damages, sureties entered into a bond to dissolve the garnishment, giving bond for about double the amount demanded—i. e.—$65,000. By reason of an amendment to the original statement of claim, allowed after the bond was filed, which amendment substituted a greater demand for damages, judgment was obtained for $89,000. In an action to recover from the sureties, *held,* the liability of the sureties was not doubled by the amendment which was made without their knowledge or consent, nor were they discharged from liability by reason of the amendment, but are liable to pay the amount claimed by the plaintiff in the original cause of action. *Commonwealth to Use of Gettman* v. *Baxter,* (Penn. 1912), 84 Atl. 136.

The question presented by the principal case is one over which courts disagree, basing their decision upon different foundations. The line of cases in accord with the principal case seems to proceed upon the assumption that the possible liability of the sureties to the full amount of the bond was contemplated by the parties. *Everett* v. *Westmoreland,* 92 Ga. 670, 19 S. E. 37; *New Haven Bank* v. *Miles,* 5 Conn. 588; *Wright* v. *Brownell,* 3 Vt. 435. Upon the other side of the question, see *De Egana* v. *Jackson,* 5 La. Ann. 430; *Langley* v. *Adams,* 40 Me. 125, proceeding upon the ground that the amendment is a material alteration in the contract for bail into which the surety enters, and by which his liability is changed. The surety has a right to insist on the terms of his contract as originally made, *Hobson* v. *Sterling,* 114 N. Y. 558, 22 N. E. 37. Practically all cases agree that if the cause of action is changed, the bail is discharged, *Carrington* v. *Ford,* Fed. Cases No. 2, 499; *Pell* v. *Grigg,* 4 Cow. 426; *Bradhurst* v. *Pearson,* 32 N. C. 55; *Willis* v. *Crooker,* 1 Pick. 204. The principal case did not look with favor upon a technical rule "which had the effect of totally discharging the sureties from any responsibility whatever."

WATER COURSES—POLLUTION—DEFENCE.—In an action for damages against a factory owner for polluting a stream, held that it was no defence that the discharges into the stream causing the pollution, were necessary in the operation of the factory. *Penn American Plate Glass Co.* v. *Schwinn* (Ind. 1912) 98 N. E. 715.

The court in this case discussed the difference between the diversion or